

Sealing Envelope Cover Sheet for Highly Sensitive Documents (HSD)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Plaintiff

Case No:

-against-

SEALING ENVELOPE COVER SHEET
FOR HIGHLY SENSITIVE DOCUMENT

Defendant

Submitted By:

Plaintiff:

Defendant:

Attorney's Name:

Firm Name:

Address:

City:

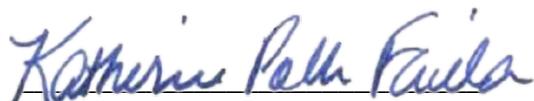
State:

Zip:

Phone Number:

Contents of Envelope:

Order Dated:



U.S.D.J./U.S. MAGISTRATE JUDGE

RECEIVED BY:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and the States of
CALIFORNIA, COLORADO, CONNECTICUT,
DELAWARE, FLORIDA, GEORGIA, HAWAII,
ILLINOIS, INDIANA, IOWA, LOUISIANA,
MASSACHUSETTS, MICHIGAN, MINNESOTA,
MONTANA, NEVADA, NEW JERSEY, NEW MEXICO,
NEW YORK, NORTH CAROLINA, OKLAHOMA,
RHODE ISLAND, TENNESSEE, TEXAS, VIRGINIA
and WASHINGTON *ex rel.* ROBERTA POWELL,

Plaintiffs,

v.

MEDTRONIC, INC., MEDTRONIC USA, INC.,
MEDTRONIC MINIMED, INC., and MINIMED
DISTRIBUTION CORP.,

Defendants.

18-cv-1628 (KPF)

SEALED ORDER

ORDER

The United States of America and the co-plaintiff states (the "States") having now declined to intervene pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B) and analogous state False Claims Acts, with respect to the claims raised in the complaint filed by the relator;

IT IS ORDERED THAT,

1. The complaint shall be unsealed thirty days after entry of this Order and, in the event that the relator has not moved to dismiss the action, service upon the defendants by the relator is authorized as of that date. If the relator voluntarily dismisses the complaint pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure within this thirty-day period, the relator may seek to modify this Order with the consent of the United States and the States or by motion on notice to the United States and the States.

2. All documents filed in this action prior to the entry of this Order shall remain under seal and not be made public, except for, thirty days after entry of this Order, the relator's complaint, this Order, and the Government's and the States' Notices of Decision to Decline Intervention (the "Notices of Decision"). The relator will serve upon the defendants this Order and the Notices of Decision only after service of the complaint.

3. Upon the unsealing of the complaint, the seal shall be lifted as to all other matters occurring in this action after the date of this Order.

4. The parties shall serve all pleadings, motions, and notices of appeal filed in this matter, including supporting memoranda, upon the United States and the States. The United States and the States may order any transcripts of depositions. The United States and the States may seek to intervene with respect to the allegations in the relator's complaint, for good cause, at any time, or seek dismissal of this action.

5. All orders of this Court in this matter shall be sent to the United States and the States by the relator.

6. Should the relator or any defendant propose that the complaint or any of its allegations be dismissed, settled, or otherwise discontinued, the party or parties proposing such relief must solicit the written consent of the United States and the States before applying for Court approval.

Dated: March 2, 2023

New York, New York

SO ORDERED:



HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

U.S. Department of Justice



*United States Attorney
Southern District of New York*

86 Chambers Street
New York, New York 10007

March 1, 2023

UNDER SEAL

BY EMAIL

The Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007
failla_nysdchambers@nysd.uscourts.gov

Re: *United States of America, et al., ex rel. Roberta Powell v. Medtronic, Inc., et al.*, 18 Civ. 1628 (KPF) (**Under Seal**)

Dear Judge Failla:

This Office represents the United States in the above-referenced *qui tam* action, brought by a relator pursuant to the False Claims Act, 31 U.S.C. §§ 3729-33 (the “FCA”), and pursuant to the analogous civil fraud statutes of States named as co-plaintiffs (together, the “Plaintiff States”). I write respectfully to advise the Court that the United States has elected not to intervene in the above-referenced action.

I have enclosed with this letter a Notice of Election to Decline Intervention (the “Notice”) and a proposed order. I understand that the Plaintiff States intend to submit their own notice indicating that they have also elected not to intervene in this action; to avoid the need for the Court to enter multiple redundant orders, the enclosed proposed order reflects the interests of the Plaintiff States as well. I respectfully request that the Court sign the proposed order and send the Notice and the order to the Clerk of the Court for filing. I also respectfully request that the Court provide this Office with a copy of the endorsed order via email to charles.jacob@usdoj.gov. We will then provide the signed order to counsel for the relator and coordinating counsel for the Plaintiff States.

I thank the Court for its consideration of this letter and the enclosed papers.

Respectfully,

DAMIAN WILLIAMS
United States Attorney
Southern District of New York

By: /s/ Charles S. Jacob
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Encl.

cc: (by email)
David J. Caputo
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3803 West Chester Pike, Suite 150
Newton Square, PA 19073
Counsel for Relator

Kevin Davis
Office of the Attorney General
California Department of Justice

Elizabeth Silverman
New York State Attorney General's Office
Coordinating Counsel for the Plaintiff States

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA and the States of CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, HAWAII, ILLINOIS, INDIANA, IOWA, LOUISIANA, MASSACHUSETTS, MICHIGAN, MINNESOTA, MONTANA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OKLAHOMA, RHODE ISLAND, TENNESSEE, TEXAS, VIRGINIA and WASHINGTON *ex rel.* ROBERTA POWELL,

Plaintiffs,

v.

MEDTRONIC, INC., MEDTRONIC USA, INC., MEDTRONIC MINIMED, INC., and MINIMED DISTRIBUTION CORP.,

Defendants.

18-cv-1628 (KPF)

THE GOVERNMENT'S NOTICE OF ELECTION TO DECLINE INTERVENTION

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States of America (the “Government” or the “United States”), by its undersigned attorney, hereby respectfully notifies the Court of its decision not to intervene in the above-referenced *qui tam* action.

Although the United States declines to intervene in this action, the United States respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows the relator to maintain her action in the name of the United States, provided, however, that the complaint “may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” *Id.* Therefore, the United States respectfully requests that in the event that the relator or any defendant seeks to dismiss, settle, or otherwise discontinue this

action, the Court shall require the party or parties proposing such relief to solicit the written consent of the Government before applying for Court approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings and briefs filed in this matter be served upon the United States. The United States also requests that the Court direct relator's counsel to serve on the United States any orders issued by the Court. The United States reserves its right to order the transcript of any depositions taken with respect to the allegations in the relator's complaint. The United States also reserves its right to intervene with respect to the allegations in the relator's complaint, for good cause, at a later date, and to seek the dismissal of the relator's action under 31 U.S.C. § 3730(e)(4).

The United States also requests that it be served with any notices of appeal.

A proposed order accompanies this notice.

Dated: New York, New York
March 1, 2023

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

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**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA, AND THE
STATES OF CALIFORNIA, COLORADO,
CONNECTICUT, DELAWARE, FLORIDA,
GEORGIA, HAWAII, ILLINOIS, INDIANA,
IOWA, LOUISIANA, MASSACHUSETTS,
MICHIGAN, MINNESOTA, MONTANA,
NEVADA, NEW JERSEY, NEW MEXICO,
NEW YORK, NORTH CAROLINA,
OKLAHOMA, RHODE ISLAND,
TENNESSEE, TEXAS, VIRGINIA AND
WASHINGTON, *ex rel.*, ROBERTA
POWELL,

CASE NO. 18-CV-1628 (KPF)

**NOTICE OF ELECTION TO DECLINE
INTERVENTION BY THE PLAINTIFF STATES**

[FILED UNDER SEAL]

Plaintiffs.

V.

MEDTRONIC, INC., MEDTRONIC USA,
INC., MEDTRONIC MINIMED, INC. and
MINIMED DISTRIBUTION CORP.,

Defendants.

Pursuant to their respective state false claims acts, the states of California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, and Washington (collectively, "Plaintiff States") notify this court of their decisions not to intervene in this action.

Although the Plaintiff States decline to intervene in this action, pursuant to their respective False Claims Acts or analogous state laws the Plaintiff States: (1) reserve their right to intervene at a later date

1 the appropriate showing, *see, e.g.*, N.Y. Fin. L. § 190(5)(a); (2) reserve their rights to seek the dismissal
 2 of the relators' action or claim pursuant to the Plaintiff States' respective false claims acts (*e.g.*, N.Y.
 3 Fin. L. § 190(5)(b)(i); Cal. Gov't Code § 12652(e)(2)(A)); (3) preserve their ability to request a stay of
 4 discovery pursuant to the Plaintiff States' respective false claims acts (*e.g.*, N.Y. Fin. L. § 190(5)(d);
 5 Cal. Gov't Code § 12652(h)); (4) respectfully request that all pleadings filed in this action, and notices
 6 of appeal, be served upon counsel for the Plaintiff States, *see, e.g.*, N.Y. Fin. L. § 190(2)(f); (5)
 7 respectfully request that the Court direct the relators' counsel to serve upon the Plaintiff States any
 8 orders issued by the Court, *see, e.g., id.*; (6) reserve their right to order any deposition transcripts in this
 9 action; and (7) request that if the relator or the defendants propose that any claims be dismissed, settled,
 10 or otherwise discontinued, the Court require that such litigant(s) solicit the written consent of the
 11 Plaintiff States before applying to the Court for such relief, *see, e.g.*, N.Y. Fin. L. § 190(5)(a).

12 Although the Plaintiff States decline to intervene, we respectfully refer the Court to the Plaintiff
 13 States' respective false claims acts, which allow the relator to maintain the action in the name of the
 14 Plaintiff States; providing, however, that the "action may be dismissed only if the court and the Attorney
 15 General give written consent to the dismissal and their reasons for consenting." *Id.* Therefore, the
 16 Plaintiff States request that, should either the relator or the defendants propose that this action be
 17 dismissed, settled, or otherwise discontinued, this Court provide Plaintiff States with notice and an
 18 opportunity to be heard before ruling or granting its approval.

19 Finally, the Plaintiff States request that the relator's Complaint, this Notice, and the attached
 20 proposed Order be unsealed. The Plaintiff States request that all other papers on file in this action
 21 remain under seal because, in discussing the content and extent of the Plaintiff States' investigations,
 22 such papers are provided by law to the Court alone for the sole purpose of evaluating whether the seal
 23 and time for making an election to intervene should be extended.

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1 Prior to this notice, the United States has filed a proposed order providing for the relief requested
2 by the Plaintiff States.

3
4 Dated: March 1, 2023

Respectfully submitted,

5 LETITIA JAMES
6 Attorney General for the
7 State of New York

8 By: /s/Elizabeth Silverman
9 ELIZABETH SILVERMAN
10 Special Assistant Attorney General
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15 Telephone: 212-417-4170
16 Email: Elizabeth.Silverman@ag.ny.gov
17 *On behalf of the Plaintiff States*